

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
THE CALIFORNIA OFFICE OF EMERGENCY SERVICES , AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
EL NINO '98 WINTER STORMS, FEMA-1203-DR-CA**

WHEREAS, the Federal Emergency Management Agency (FEMA) proposes to administer Federal Disaster Public Assistance Programs and the Hazard Mitigation Grant Program (HMGP) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended (Stafford Act), and its implementing regulations contained in 44 CFR Part 206, for the assistance, the repair or replacement of damaged facilities and structures, and the planning and implementation of HMGP Projects affected by Disaster Number FEMA-1203-DR-CA and the Flood Mitigation Assistance programs (FMA); and,

WHEREAS, FEMA has determined that the implementation of these programs may affect properties included in or eligible for the National Register of Historic Places (National Register), and has consulted with the Advisory Council on Historic Preservation (Council) and the California State Historic Preservation Officer (SHPO) pursuant to the regulations, 36 CFR Part 800, dated October 1, 1986, implementing Sections 106 and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. 470; and,

WHEREAS, FEMA, the Council and the SHPO, acknowledge that the implementation of FEMA programs and disaster assistance will be more effective if a Programmatic Agreement (PA), pursuant to 36 CFR § 800.13, is in place to specify procedures that will relieve the Council and SHPO from review of certain routine activities with little potential to adversely affect historic properties; and further, to promote efficiency so that the effects of these undertakings on historic properties can be considered while delays to FEMA's delivery of assistance are minimized; and,

WHEREAS, the State will receive financial and technical assistance from FEMA as a result of this major disaster and will in turn provide monies and other assistance to qualified applicants to alleviate the effects of the major disaster, and as such the California Office of Emergency Services (OES) is responsible for administering the disaster assistance program, has participated in this consultation, and been invited to execute this PA;

NOW, THEREFORE, FEMA, the Council, the SHPO, and OES agree that this disaster assistance program shall be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all undertakings under FEMA actions.

STIPULATIONS

To the extent of its legal authority and in coordination with the Council, SHPO, and OES, FEMA shall require that the following measures are carried out:

I. APPLICABILITY

- A. This PA applies upon execution to Public Assistance Programs and HMGP for this disaster and to FMA.
- B. The signatories shall comply with the Stipulations set forth in this PA for all undertakings that are assisted entirely or in part by funds from the FEMA programs listed above. FEMA shall not fund any application for assistance under these programs until the review of the individual undertaking is completed pursuant to Stipulation IV., V., or VI. Any undertaking that does not qualify for review under the terms of this PA shall be reviewed in accordance with 36 CFR Part 800.
- C. OES and the SHPO may cooperate to identify and approve mitigation initiatives, such as locating landfill sites for debris disposal and areas for chipping of vegetation debris, and to advise FEMA as to the nature and location of these sites at the time of the disaster. Chipping sites and landfill areas established after the disaster declaration will be evaluated under Stipulation IV.
- D. FEMA may provide initial funding for the administrative action of acquiring properties, and OES shall ensure that the applicant community agrees to secure the structures from physical alteration, illegal entry, and damage until the requirements of this PA are completed. Applicant communities shall agree to the above provisions in writing before FEMA will release any project funding. FEMA will not release funding for demolition or the removal of any structure until the requirements of this PA have been met.
- E. Time designations stated herein for response to FEMA determinations shall be considered as calendar days. If the SHPO or the Council do not respond within the time frames agreed upon in this PA, FEMA may assume SHPO or Council's concurrence with FEMA's determination and proceed in accordance with its request for SHPO or Council's comment.

II. INITIAL COORDINATION

- A. Within 10 days of the execution of this PA: :
 - 1. FEMA will ensure that the OES, SHPO, and FEMA points of contact in the disaster field office established for the disaster have been provided with the names, addresses, and telephone numbers of the others.
 - 2. FEMA will provide guidance to SHPO for the reimbursement of eligible SHPO costs, through procedures as outlined in Stipulation VIII.A.
 - 3. The SHPO will:
 - a. provide FEMA with available listings of properties within the declared disaster area that are included in the California Register of Historical Resources. This Register includes properties listed on or previously determined eligible for the National Register;
 - b. provide FEMA with a comprehensive inventory of properties, including archeological sites, located within the declared disaster area. FEMA shall assure confidentiality of archeological site locations by executing a mutually acceptable confidentiality agreement with the SHPO prior to receipt of archeological site information from the inventory;
 - c. provide SHPO staff or consultants to assist FEMA in carrying out its Section 106 responsibilities;
 - d. assist FEMA in working with organizations in the area affected by the disaster that are known to have an interest in historic properties to ensure that the public has a reasonable opportunity to comment on FEMA's activities pursuant to its responsibilities and this PA.

III. IDENTIFICATION OF HISTORIC PROPERTIES

- A. The Area of Potential Effects (APE): The APE will be the individual structure when a proposed undertaking is limited to the repair or rehabilitation of its interior or exterior features. FEMA shall determine the APE and may consult with the SHPO to establish the APE for HMGP projects; FMA projects; Public Assistance projects that require designation as alternate or improved projects; projects with ground disturbing activities that could affect archeological properties or new construction,

including additions; or the removal, including demolition, of character defining features or structures provided that such actions are not exempted from review pursuant to Stipulation V.A. or VI. below.

B. Historic Properties

1. Only those properties cited in Stipulation II.A.3.a., above, and those included in the inventory cited in Stipulation II.A.3.b., above (hereafter, California Historical Resource Information System: CHRIS), shall require a review under this PA. However, if a property not listed in the CHRIS is at least 50 years old, FEMA shall either comply with 36 CFR § 800.4(b-c) to determine if the property is National Register eligible or by mutual agreement, delegate this responsibility to the SHPO. Any SHPO recommendation resulting from the exercise of this delegated responsibility shall require FEMA concurrence. If the project involves ground disturbing activities, Stipulation VI. shall be followed.
2. For projects that qualify as Small Projects under the Public Assistance program (44 CFR §206.205), absence of a property from the CHRIS shall preclude the need for any further review under this PA.

C. Geographical Information System

1. The SHPO, in coordination with and assisted by FEMA and other partners, shall make the CHRIS available on a Geographical Information System (GIS). This development is dependent upon funding from partners. It is expected that this GIS data base will enable the partners to expedite and facilitate the process of identifying and evaluating the full range of historic properties and their specific locations within the declared disaster area and also predict the likelihood that historic properties may be present in areas that have not been previously surveyed. This system would be comprised of the following elements:
 - a. Resources
 - i. Shapes and locations
 - ii. Indexed coded data, including NR status
 - iii. Textual data, both imaged and electronic text
 - iv. Sketch maps and photographs, imaged
 - b. Reports, Surveys, etc.
 - i. Shapes, and locations
 - ii. Bibliographic references
 - iii. Imaged report, if necessary
 - iv. Predictive Modeling application, if necessary
2. Within 45 days after execution of this PA, FEMA and the SHPO shall consult to develop a process and a corresponding schedule for developing a pilot program that will provide an on-line GIS delivery system for CHRIS, as stated in Stipulation III.C.1., above. The SHPO will provide the resources for updating and maintaining this data base. FEMA will provide an initial subscription fee of \$300,000 to SHPO for development and use of this pilot program, and FEMA and SHPO will explore methods for providing for future subscription and user fees.

- D. The Council may request information on any determination of National Register eligibility made pursuant to Stipulation III.B.1., above, and at its discretion, may request that FEMA obtain a determination of eligibility from the Secretary of the Interior.

IV. EXPEDITED PROJECT REVIEW (For Emergency Undertakings)

- A. Applicability of Expedited Review Procedures: FEMA anticipates that it may be required to perform or fund emergency actions, which may adversely affect properties included in the CHRIS, or that have not been previously evaluated for National Register eligibility (see Stipulation III.), in response to an immediate threat to the preservation of human life or property as a result of the declared disaster or FEMA program. Any action that is not in response to an immediate threat to the preservation of human life or property, as determined by FEMA, shall be reviewed under the procedures of

Stipulation V. The expedited review period will begin at the time that FEMA determines that an emergency action is required, and will remain in effect for the time necessary to implement this expedited review, but no more than 30 days from the time of discovery of the emergency situation.

- B. Implementation of Expedited Review Procedures: If FEMA determines that the expedited review procedures apply, FEMA shall notify the SHPO that it intends to review an emergency action and shall share all information upon which the decision was made with the SHPO. If the SHPO does not object to FEMA's notice within 2 days (or within 24 hours in extreme situations), FEMA may fund the emergency action after it completes the following expedited review:
1. FEMA may request and the SHPO may agree to determine if such a property is included in the CHRIS or, if previously unevaluated, determine if it may meet the National Register criteria. The SHPO, if participating, shall notify FEMA as soon as possible, but in no case later than 3 days after receiving FEMA's request, if the property is listed or previously determined eligible or appears to meet at least one of the National Register criteria. The SHPO shall document its recommendations, and FEMA shall accept or reject any SHPO recommendation regarding National Register eligibility in writing. Or, FEMA will assume that the property is eligible for the National Register and proceed to 2 below.
 2. If it appears that an emergency action will adversely affect a historic property during this 30 day expedited review period, FEMA shall provide the SHPO with available information about the condition of the property, the proposed action, and prudent and feasible measures that would take the adverse effect into account, and request the SHPO's comments. FEMA may furnish this information to the SHPO using written requests, telephone conversations, meetings, or electronic media, at its discretion. The SHPO, if participating, shall respond to any FEMA request for comments within 5 days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.
 3. If FEMA does not accept any SHPO recommendation pursuant to this stipulation, or the SHPO objects to FEMA's proposal to use this expedited review procedure, FEMA shall request the Council's comments. The Council shall provide final comments to FEMA in response to such a request within 3 days following receipt of FEMA's request, unless FEMA determines the nature of the emergency action warrants a shorter time period.

V. STANDARD PROJECT REVIEW (For Non-Emergency Undertakings)

For non-emergency stabilization, relocation, elevation, demolition, and repair activities, or following the 30 day expedited review period and prior to FEMA's decision to fund a project or a HMGP application resulting from the declared disaster, or to fund a community through Project Impact, FEMA shall require that the following be completed:

- A. Projects Not Requiring Review by SHPO or Council.
1. Properties that are less than 50 years old will not require review by the SHPO or Council. FEMA may approve funding for such projects after documenting this decision in writing in its project files and conclude the review required by this PA.
 2. Small Project Review: For actions involving properties included in the CHRIS, that are small projects, as defined in 44 CFR §206.205, review is complete when the applicant certifies that repairs or hazard mitigation measures (as provided for in Section 406 of the Stafford Act) will be done in-kind to match pre-existing material, form and workmanship. If the applicant does not certify that the repair will be done accordingly, then the historic property will be treated in accordance with the Large Project Review in Stipulation V.A.3. below.
 3. Large Project Review: If FEMA determines that the scope of work, described in a DSR prepared by the joint Federal/State inspection team or developed by an applicant for a particular project or in an HMGP application:
 - a. is limited to the Programmatic Exclusions included in Appendix 1 to this PA.

- b. meets the **Secretary of the Interior's Standards for the Treatment of Historic Properties 1992 (Standards)**, and qualifies as an exception to the criteria of adverse effects in 36 CFR 800.9(c).2., so the effects of the undertaking will not be adverse, provided:
 - i. FEMA's determination was made by a person who meets or exceeds the **Secretary of the Interior's Professional Qualifications** as an Historic Architect or Architectural Historian (HA or AH);
 - ii. that these determinations are based upon information deemed by the HA or AH to be adequate to identify and evaluate affected historic properties;
 - iii. that decisions regarding these undertakings are made and carried out in conformity with applicable policies, guidelines, and standards, and are documented in writing by FEMA.
 4. FEMA shall document the clearances provided by 1., 2., and 3. above in the project files and conclude the review required by this PA.
 5. The Council may request information on any determination of no adverse effect made pursuant to Stipulation V.A.3.b. above.
- B. Projects Requiring Review by SHPO or Council. If review is not concluded prior to or under V.A.3.b., above, and after the scope of work has been determined eligible for funding, FEMA may require the project applicant for any project that may affect an historic property to review the eligible scope of work in consultation with the SHPO to suggest methods of repair/construction that will conform with the **Secretary of the Interior's Standards or Guidelines**. FEMA will review the suggestions, proposed by the project applicant and the SHPO, if participating, for funding eligibility. Within 21 days of receipt of the adequate information, FEMA shall complete the following:
1. If FEMA determines the project will have no effect or that it conforms to the Standards and will not adversely affect historic properties pursuant to 36 CFR §800.9(c)(2). FEMA shall provide project documentation and notify the SHPO of its determination. Unless the SHPO objects within 21 days, FEMA may fund the project and no further review is required.
 2. If the SHPO objects within 21 days, FEMA may consult further with the SHPO and the applicant to modify the project to ensure that it will conform to the **Standards**. If the applicant modifies the project in response to the SHPO's and FEMA's concerns, FEMA may fund the project and shall notify the SHPO accordingly. If the project applicant cannot modify the project in response to the SHPO's or FEMA's concerns, or if the project cannot be modified to conform to the Standards, FEMA shall initiate adverse effect consultation pursuant to Stipulation V.C.
- C. Resolution of Adverse Effects: If FEMA determines in accordance with Stipulation V.B.2 that the project will adversely affect a historic property, it shall determine if the project will be treated in accordance with the Standard Mitigation Measures set out in 1.b below, or by means of the consultation process set out in 36 CFR 800.5(e), and shall notify the SHPO in writing of its decision. If SHPO does not object to FEMA's decision to treat the adverse effect according to the Standard Mitigation Measures, within 7 days, FEMA shall proceed as set forth below. Standard Mitigation Measures do not apply if the property is a National Historic Landmark or in the situations listed in Stipulation V.C.2., below.
1. Developing a Standard Mitigation Measures Agreement
 - a. FEMA, OES, and the project applicant shall consult to develop a Standard Mitigation Measures Agreement (SMMA) that establishes the mitigation and recordation measures to treat the adverse effects of undertakings including but not limited to, demolition or elevation of historic properties. FEMA may elect to consult informally at any time during this process with the SHPO and/or likely parties to the agreement regarding the appropriateness of developing an SMMA. FEMA shall submit the signed SMMA to the SHPO for concurrence, and any of the other parties that are interesting in signing. The Council will not be a party to this SMMA.
 - b. An SMMA shall include one or more of the following measures, modified as necessary to consider the effects of the specific undertaking:

- i. Relocation (of individual structures);
 - ii. Recordation;
 - iii. Data Recovery; and
 - iv. Curation.
- c. FEMA and SHPO signatures on an SMMA are required. All other signatures are optional. Copies of the signed SMMA shall be sent to FEMA Headquarters and the Council as a record of decision.
- 2. Developing a Memorandum of Agreement (MOA): The consultation process set forth in 36 CFR §800.5(e) shall be followed and FEMA shall provide the Council with an adverse effect notice if:
 - a. FEMA determines not to implement a SMMA;
 - b. the SHPO objects in writing within 7 days after receipt of FEMA's notice that it will proceed with the development of a SMMA;
 - c. during the consultation to develop the SMMA, the SHPO determines that the effects of an undertaking cannot be adequately addressed;
 - d. the SHPO withdraws from consultation;
 - e. the undertaking is known to have public opposition;
 - f. the undertaking will adversely affect a National Historic Landmark; or
 - h. the undertaking may affect a historic property that contains human remains or is important as a traditional cultural place.
- 3. Developing a Programmatic Memorandum of Agreement (P-MOA): FEMA, SHPO, and the Council, may consult to develop P-MOAs for particular repetitive activities, such as but not necessarily limited to:
 - a. elevation of structures above flood levels,
 - b. relocation of structures out of the floodplain,
 - c. repair of roads,
 - d. repair or improvements to existing utilities,
 - e. improvements to drainage channels,
 - f. construction of or improvements to detention/retention basins,
 - g. improvements to existing culverts,
 - h. improvements to existing dams, and
 - i. vegetation management projects.

These P-MOAs will identify programmatic conditions and/or mitigation measures that will be required for clearance of these projects that are repetitive in nature without further review from SHPO or the Council. In the event the activities described do not match those of the P-MOA, or the conditions imposed can not be met, the project will follow the review process as required by this PA.

VI. GROUND DISTURBING ACTIVITIES AND ARCHEOLOGICAL PROPERTIES

- A. For the purpose of this PA, ground disturbing activities with the potential to affect historic properties will include, but are not limited to: subsurface ground disturbance; removal of trees; excavation for drainage basins, footings, foundations, retaining walls, and other methods of slope stabilization; grading of roadways and unpaved areas below previous levels; and installation of utilities such as sewer, water, storm drains, electrical, gas, communication, leach lines, and their appurtenant facilities.
- B. Small Project Review: For actions that are small projects, as defined in 44 CFR §206.205, review is complete when the applicant certifies that the ground disturbing activities will be restricted to previously disturbed soil and qualifies as a Programmatic Exclusion included in Appendix 1. If the applicant does not so certify, FEMA shall ensure the following review is undertaken:
- C. Large Project Review: FEMA shall inform OES of the State's responsibility to coordinate with the project applicant and advise FEMA if the project will involve ground disturbing activities. Unless the archeological/historic properties within the APE have been determined not eligible for the National Register pursuant to Stipulation III.B.1., or the scope of work qualifies as a Programmatic Exclusion included in Appendix 1, the procedures below will be followed:

1. FEMA, in consultation with the project applicant, if appropriate, will determine if the project will involve ground disturbing activities described in Stipulation VI.A. Where FEMA and SHPO agree, in an informal review, that the project with ground disturbing activities could not affect archeological properties, no further review will be required by this PA. If agreement is not reached during this informal review, FEMA will proceed as follows in VI.C.2. below.
2. For projects with ground disturbing activities that may affect archeological properties FEMA will proceed as follows:
 - a. Determine if there are archeological properties within the APE. If it can be determined that there are no archeological properties within the APE, no further review will be required by this PA.
 - b. If there are archeological properties present within the APE, then FEMA and the project applicant shall consult to develop ways to avoid the archeological properties. If the identified archeological properties can be avoided (no effect) no further review will be required by this PA.
 - c. If any of the archeological properties can not be avoided such properties shall be evaluated in consultation with SHPO to determine eligibility for the National Register.
 - d. If FEMA and SHPO agree the properties are not eligible for the National Register, no further review will be required by this PA. If FEMA and SHPO agree the properties are eligible for the National Register under Criterion D, a treatment (data recovery) plan shall be prepared in consultation with the SHPO and implemented.
 - e. If the properties are eligible for the National Register under Criteria A, B, C, contain human remains, or are a Traditional Cultural Place, FEMA will follow the Resolution of Adverse Effects stipulated in V.C., above.
3. The review process outlined in VI.C.2. above, is qualified by the following considerations:
 - a. FEMA may consult with the SHPO at any time during this process or FEMA may request the SHPO to assume any or all of these responsibilities. Any SHPO recommendations resulting from these delegated responsibilities will require concurrence by FEMA. For any FEMA determination that concludes a review under VI.C.2.c. and VI.C.2.d., FEMA will seek the comments of the SHPO, and the SHPO will be afforded 15 days to provide its recommendations or comments to FEMA.
 - b. When seeking the SHPO's comments, FEMA will, under a signed cover letter, provide the SHPO with a packet containing copies of all applications and all information that FEMA may have about archeological properties regardless of evaluation status. The packet should contain at least a copy of the DSR(s), or HMGP application, with the scope of work, FEMA's APE description and map, reports, other cartographic items including USGS quads, photographs, and other items as listed in Appendix 2, that would assist SHPO review. SHPO may request clarification or further documentation, from FEMA, to assist in making its determinations.
 - c. FEMA may accept or reject any SHPO recommendation regarding: absence or presence of archeological properties, request for further information from the appropriate CHRIS regional center or field survey, or determination of eligibility for the National Register. FEMA will document its decision in writing to SHPO and OES.
 - d. FEMA may utilize any available information, including studies provided by the applicant, to assist in identifying archeological properties as required by VI.C.2.a. or VI.C.2.d. If the available information is not sufficient to determine the absence or presence of archeological properties within the APE, CHRIS will be contacted to provide further information on previous surveys within or near the APE.

- e. If the information provided by CHRIS is not sufficient to determine the absence or presence of archeological properties, or the eligibility of the property for the National Register within the APE, an archeological survey may be indicated.
4. Time frames for SHPO response to FEMA's requests for comments or recommendations will be as follows:
- a. Evaluate information provided by FEMA and CHRIS and provide recommendations regarding absence or presence of historic properties, request further information, or determine a field survey is needed - 15 days from date of receipt. If further information is requested the review period will be suspended until the information is provided to SHPO.
 - b. Perform recommended field survey to determine absence or presence of archeological properties - 21 days from date of receipt, unless a longer time frame is mutually agreed upon.
 - c. Consult with FEMA and/or the applicant regarding the avoidance of archeological properties - the number of days shall be as mutually agreed upon.
 - d. Evaluate archeological survey information provided by FEMA or the applicant regarding the eligibility of historic properties for listing on the National Register - 10 days from date of receipt.
 - e. Perform recommended field survey and associated research to determine the eligibility of archeological properties for listing on the National Register - 21 days from date of receipt.
5. In consultation with the SHPO, FEMA shall ensure that all materials and records resulting from archeological survey and data recovery conducted for the project are curated at a repository within the State of California and in accordance with 36 CFR Part 79, or alternatively in an appropriate local or regional repository. If human remains, burial artifacts, and items of Traditional Cultural Patrimony are recovered, the signatories to this agreement shall consult further to determine the appropriate disposition of the remains in accordance with the provisions of any applicable Federal or State laws.
6. FEMA shall ensure that all final archeological reports resulting from actions pursuant to this PA will be provided to the SHPO and in an acceptable format. Final archeological reports may be considered for possible submission to the National Park Service and the National Technical Information Service (NTIS). FEMA shall ensure that the SHPO will be given the opportunity to review a draft of the report prior to submission. FEMA shall ensure that all such reports are responsive to contemporary standards, and to the **Guidelines**. Precise locational data shall be provided in a separate appendix which will be withheld from release to the public if the SHPO advises FEMA that its release could jeopardize archeological sites or cultural values, consistent with the authority and criteria provided in Section 304 of NHPA.

VII. REVIEW OF CHANGES TO APPROVED SCOPE OF WORK, AND UNEXPECTED DISCOVERIES

- A. FEMA shall require notification from OES as soon as practicable of all changes in the approved scope of work for a public assistance or HMGP project involving a National Register eligible or listed property. FEMA shall review the additional work items and determine if they will have an effect on the property. FEMA may authorize the project applicant to proceed with the modified scope of work if the proposed changes are allowable as programmatic exclusions pursuant to this PA or if FEMA determines that they will have no adverse effect pursuant to Stipulation V.A.3.b. of this PA. If FEMA determines that the additional work will result in an adverse effect to a historic property, FEMA shall initiate adverse effect consultation pursuant to Stipulation V.C.
- B. FEMA shall require notification from OES as soon as practicable if it appears that a FEMA funded or assisted undertaking will affect a previously unidentified property that may be eligible for the National Register or affect a known historic property in an unanticipated manner. FEMA may require the project applicant to stop construction in the vicinity of the discovery and shall require the project applicant to take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO. FEMA shall notify the SHPO at the earliest possible time and

consult to develop actions that will take into account the effects of the undertaking. FEMA will notify the SHPO of any time constraints, and FEMA and the SHPO will mutually agree upon time frames for this consultation. OES and the project applicant may participate in this consultation. FEMA shall provide the SHPO with written recommendations that take the effect of the undertaking into account. If the SHPO does not object to FEMA's recommendations within the agreed upon time frame, FEMA shall require the project applicant to modify the scope of work as necessary to implement the recommendations.

VIII. PUBLIC INVOLVEMENT

- A. FEMA will consult with the SHPO to determine if there are organizations or individuals that may be concerned with the effects of an undertaking on historic properties, and will provide notice to identified parties of the undertaking. FEMA may also provide notice and opportunity for public comment or participation in an undertaking through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set out at 44 CFR Part 10 as well as the Executive Orders 11988 and 11990 set out in CFR Part 9 relating to floodplains and wetlands. With the concurrence of the SHPO and Council, FEMA shall invite interested persons to participate as consulting parties in adverse effect consultations as required in 36 CFR §800.5(e)(1) and shall integrate such consultation within the requirements of NEPA.
- B. At any time during the implementation of the measures stipulated in this PA should an objection to any measure within the PA or its manner of implementation be raised by a member of the public, FEMA shall take the objection into account and consult as needed with the objecting party, the SHPO, or the Council to address the objection. If the objection pertains to FEMA's decision to implement standard mitigation measures pursuant to Stipulation IV.F, FEMA shall terminate the abbreviated consultation process and initiate consultation with the SHPO, the Council, the interested public and any other consulting parties pursuant to 36 CFR §800.5(e).

IX. ENVIRONMENTAL CONSIDERATIONS

When an environmental document is required pursuant to NEPA for an undertaking subject to this PA, FEMA shall integrate the SHPO's advice or comments, as well as all surveys and studies required to comply with this PA and 36 CFR Part 800, into the NEPA review process. FEMA shall coordinate and document in the NEPA document the identification, evaluation, assessment, and resolution of adverse effects through consultation and public participation for historical and cultural resources, as well as for natural and social environmental issues. Even when an undertaking does not require NEPA documentation because it is statutorily excluded from further review under NEPA, FEMA still shall comply with the requirements of this PA and 36 CFR Part 800.

X. FEMA, COUNCIL, SHPO, OES, AND APPLICANT RESPONSIBILITIES

- A. FEMA:
 - 1. recognizes that portions of Stipulations II., III., IV., V., and VI. of this PA may require the SHPO to perform additional activities and incur additional expenses not normally required by the Section 106 process set out in the Council's regulations at 36 CFR Part 800. FEMA shall provide 100% funding under the Stafford Act to SHPO through standard procurement procedures (40-1) for these additional costs in accordance with 44 CFR Part 206. SHPO activities that are normally required under 36 CFR Part 800 will not be a part of FEMA's reimbursement.
 - 2. will ensure that all FEMA actions set forth in Stipulations V.A.3.b., V.B.(1 & 2), V.C., VI.C.(1, 2, 3, 5, & 6) are carried out by or under the direct supervision of persons who meet or exceed the Secretary of the Interior's Professional Qualifications in the disciplines of Historic Architecture, Architectural History, or Archeology as applicable.
 - 3. may delegate its review activities to OES staff who meet or exceed the Secretary of the Interior's Professional Qualifications as Historic Architect, Architectural Historian,

Historian, or Archaeologist. FEMA can pay for these activities out of management cost provisions.

B. The SHPO, at its discretion, may:

1. delegate all or some of the SHPO's responsibilities under this PA to persons who are not currently members of the SHPO staff and who will serve as the SHPO's representative with respect to the decisions and actions required by this PA. The SHPO shall consult with OES and FEMA regarding the representative selected, the scope of responsibilities delegated and implementing procedures related to the decisions and actions delegated. Any OES objection to the representative selected, to the scope of, or to the manner in which the delegated responsibilities are to be carried out must be provided to FEMA in writing within 7 days. Following receipt of the OES objection, or if FEMA does not concur with the SHPO, FEMA shall within 7 days forward all documentation relevant to the dispute to the Council for resolution pursuant to Stipulation XI. All references to the SHPO within this PA apply equally to any such SHPO representative.
2. delegate the responsibility for research and preparation of summary documentation in determining the National Register eligibility of a property, not previously evaluated, as stipulated in III., to a qualified preservation consultant, who meets or exceeds the Qualifications Standards referenced above, hired by the applicant. The applicant shall submit the names of consultants being considered for this responsibility to SHPO for approval. This will be a reimbursable expense for the applicant. The SHPO will consult with the approved consultant to coordinate the appropriate format and content of the document submitted to SHPO for approval. SHPO will have 10 days to review the consultant's documentation and make a recommendation to FEMA regarding the National Register eligibility of the subject property. FEMA shall complete its review in accordance with Stipulation V.

- C. FEMA will notify OES and appropriate staff of the execution of this PA and will develop management procedures to ensure that its terms are implemented. FEMA shall prepare written documentation to serve as evidence that FEMA has complied with the terms of this PA and, where applicable, with 36 CFR Part 800. The SHPO and the Council, if requested by FEMA, may provide occasional basic historic preservation training to FEMA, OES, project applicants, and consultants. This training can include, but may not be limited to, the implementation of the PA and the application of the Standards to rehabilitation projects. The SHPO and the Council may also assist FEMA in explaining its programs and policies, and FEMA will cooperate with the SHPO and the Council in developing procedures that effectively integrate historic preservation concerns with the needs of FEMA's undertakings.
- D. FEMA shall document its review of the SHPO recommendations and its determinations for each undertaking in its project or environmental files. This information, including the general project documentation, shall be available for review by the SHPO or Council following reasonable notice.
- E. OES, as grantee, shall advise its applicants in writing that they may not initiate construction on projects, for which they are seeking federal funding, prior to compliance with this PA. The grantee shall also advise its applicants that they will jeopardize federal funding if construction is initiated prior to compliance with this PA.
- F. FEMA, SHPO, OES, or applicants with numerous projects may request that the parties develop alternate Programmatic Agreements that re-delegate or modify responsibilities assigned to FEMA or the SHPO by this PA. Such alternate PAs will require the applicant to contract with qualified preservation consultants to carry out any re-delegated responsibilities. The applicant shall submit the names of consultants being considered for this responsibility for approval by FEMA, SHPO, and OES. Development of alternate PAs can proceed only upon unanimous consent of FEMA, OES, the SHPO, and the Council.

XI. DISPUTE RESOLUTION

- A. Should the SHPO or Council object within time frames provided by this PA to any plans, specifications, or actions provided for review pursuant to this PA, FEMA shall consult further with the objecting party to seek resolution. Should FEMA object within time frames provided by this PA to any plans, specifications, or actions provided for review pursuant to this PA, FEMA shall consult further with the other parties to seek resolution. If FEMA determines within 14 days of receipt that the SHPO's or the Council's objection cannot be resolved, FEMA shall forward to the Council all documentation relevant to the dispute including FEMA's proposed resolution to the objection. Within 30 days after receipt of all pertinent documentation, the Council shall either:
1. advise FEMA that it concurs with FEMA's proposed resolution whereupon FEMA shall respond to the objection accordingly; or
 2. provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the dispute; or
 3. notify FEMA that it will comment pursuant to 36 CFR §800.6(b), and proceed to comment. Any Council comment provided in response to such a request shall be taken into account by FEMA in accordance with 36 CFR §800.6(c)(2) with reference to the subject of the dispute.
- B. Any recommendation or comment provided by the Council shall pertain only to the subject of the dispute, and FEMA's responsibility to carry out all actions under this PA that are not subject to the dispute shall remain unchanged.

XII. ANTICIPATORY DEMOLITION

FEMA agrees that it will not grant assistance to an applicant who, with intent to avoid the requirements of this PA or NHPA, has intentionally and significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. FEMA may, after consultation with the Council, determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. FEMA shall specifically advise OES of this Stipulation and shall require that OES advise project applicants of its terms.

XIII. MONITORING AND REPORTING

- A. The SHPO and the Council may monitor any activities carried out pursuant to this PA, and the Council will review any activities if requested. FEMA and OES shall cooperate with the SHPO and Council in carrying out these monitoring and review responsibilities, and FEMA shall maintain records that document compliance with the terms of the PA for all projects reviewed pursuant to this PA.
- B. FEMA shall provide the SHPO and the Council with an annual report for the previous calendar year on January 31st of each year that this PA is in effect. This report will summarize the actions taken to implement the terms of this PA and recommend any actions or revisions that should be considered during the next year. The parties will review this information to determine if amendments are necessary. FEMA shall notify all parties to the PA when its actions under the disaster have been concluded.

XIV. AMENDMENTS AND NON-COMPLIANCE

- A. If any of the signatories to this PA believes that the terms of the PA cannot be carried out, or that an amendment to the terms of this PA must be made, that signatory shall immediately consult with the other signatories to develop amendments to this PA. If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation XI. shall be followed.
- B. Should any of the signatories raise an objection at any time during implementation of the undertaking as to compliance with the stipulations in this PA, FEMA shall take such objection into account and consult with the objecting party, and the other signatories to resolve such objection. If the objection cannot be resolved, the dispute resolution process set forth in Stipulation XI. shall be followed.

XV. TERMINATION

- A. FEMA, the SHPO, or Council may terminate this PA by providing 30 calendar days written notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this PA shall require FEMA compliance with 36 CFR Part 800.
- B. This PA may be terminated by the execution of a subsequent PA that explicitly terminates or supersedes its terms.

XVI. EXECUTION OF PROGRAMMATIC AGREEMENT

This PA may be executed in counterparts, with a separate page for each signatory, and FEMA shall ensure that each party is provided with a copy of the fully executed PA. This PA shall become effective on the date of the last signature to this PA.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that FEMA has afforded the Council a reasonable opportunity to comment on its administration of the Federal disaster Public Assistance program and the Hazard Mitigation Grant Program (HMGP) pursuant to Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, for the repair or replacement of damaged facilities and structures required as a result of the disaster and the planning and implementation of HMGP Projects, and further evidences that FEMA has satisfied its Section 106 responsibilities for all individual undertakings of the programs.

SIGNATURE PAGES ON FILE

APPENDIX 1: PROGRAMMATIC EXCLUSIONS

The following list of project activities do not require review by the SHPO or Council pursuant to Stipulation V.A.3.a., VI.B and VI.C. Activities may be added to or deleted from this list without amending the entire PA through a letter agreement that includes concurrence by FEMA, the SHPO, and Council.

I. GROUND DISTURBING ACTIVITIES AND SITE WORK

- A. The ground disturbing activities related to the repair or replacement of footings, foundations, retaining walls, and other earth retaining or slope stabilization systems (such as gabion baskets, etc.); roadways; and utilities (such as sewer, water, storm drains, electrical, gas, communication, and leach lines, and septic tanks, etc.), when excavation will not disturb the profile of undisturbed soil that existed following the previous excavation necessary for the installation of such man-made improvements. If the items being repaired or replaced have achieved a historic significance of their own, this Programmatic Exclusion will not apply unless the work is done in kind to exactly match existing materials and form.
- B. Repair or replacement of culvert systems within rivers, streams, or drainageways when work is substantially in kind, including modest increase in size or capacity, provided the excavation will not disturb the profile of undisturbed soil that existed following any previous excavation necessary for the installation of the now damaged culvert. If the man-made improvements surrounding the culvert (such as headwalls and wingwalls) have achieved a historic significance of their own, this Programmatic Exclusion will not apply unless the work is done in kind to exactly match existing materials and form.
- C. Installation of utilities such as sewer, water, storm drains, electrical, gas and communication lines, under and within the limits of, existing improved roads, roadways, or other previously disturbed rights of way.
- D. Repair or replacement of driveways, parking lots and walkways
- E. Repair or replacement of fencing and freestanding exterior walls when work is done in kind to exactly match existing materials and form.
- F. Repair or replacement of metal utilitarian structures including major exposed pipelines, pumphouses, antenna towers, if reconstructed in kind, or in the same size and configuration using (superior functioning) modern materials. The finish on modern materials must be sympathetic to the site and context. Bridges and water towers are not considered metal utilitarian structures for the purposes of this exclusion.
- G. Installation of temporary structures to house uses such as classrooms, offices or housing. Ground disturbing activities and structures installed in Historic Districts shall be excluded from this exemption.
- H. Installation of scaffolding, temporary reversible barriers such as chain link fences, and polyethylene sheeting or tarps;
- I. Pruning or replacement of damaged landscaping in kind or with a similar species. Repair or replacement of related hardscaping and utilities including paving, planters, trellises, irrigation, and lighting if done in-kind to match existing materials and form.

II. BUILDINGS

A. Interior Floors, Walls, Stairs and Ceilings

1. Interior rehabilitation projects limited to actions for repairing and replacing, retaining and preserving, and protecting and maintaining in kind materials and features, consistent with the Secretary of the Interior's Standards for Rehabilitation.
2. Repair of interior walls and ceilings including plaster and dry wall to exactly match existing walls, this can include the repair of interior cracks up to one inch wide. Any material used to repair such cracks should match the color and workmanship of the existing materials. The repairs must be restricted to the damaged area and care must be taken in the application to avoid damage to adjacent materials. This exception does not apply to walls that have decorative plaster trim or other finishes that contribute to the architectural significance of the property.
3. Replacement or repair of suspended or glued ceiling tiles.
4. Installation of grab bars and minor interior modifications for handicapped accessibility.
5. Non-destructive testing for hazardous materials (lead paint, asbestos, etc.) or testing in concealed/concealable locations.

B. Utilities and Mechanicals

1. Minor electrical, plumbing, and mechanical work within buildings, limited to upgrading or in kind replacement, with the exception of historic fixtures that shall be repaired when possible.
2. Replacement or installation of fire detection and suppression systems, security alarm systems, and HVAC systems, that does not affect the exterior of the building or require installation of new duct work throughout the interior.

C. Windows and Doors

1. Repair or replacement of severely damaged or deteriorated windows and doors when the repair or replacement is done in kind to exactly match the existing materials and form.
3. Replacement of window panes in kind or with double or triple glazing so long as the glazing is clear and untinted and the window does not alter the existing window material and form. The replacement of existing archaic or decorative glass is not included in this exclusion. Historic windows and/or glazing may be treated with window films provided that films are without color or tint.
3. Historic door and window hardware should be repaired when possible.

D. Exterior Walls, Cornices, Porches and Foundations

1. Repainting of existing painted surfaces provided that destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting and chemical

cleaning, are not used.

2. Repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair or replacement is done in kind to exactly match existing material and form.
3. Repair or replacement of signs or awnings when work is done in kind to closely match existing materials and form.
4. Temporary bracing or shoring as part of stabilization.
5. Anchoring of masonry walls to floor systems so long as anchors are embedded and concealed from exterior view such as in the Hilti systems.
6. Reconstruction or repair of parapets, chimneys, and cornices to exactly match existing in all material and visual aspects. Bracing and reinforcing of chimneys and fireplaces as long as bracing and reinforcing are either concealed from exterior view or removable in the future.
7. Stabilization of foundations and the addition of foundation bolts, provided that masonry foundation mortars match the historic color, strength, and joint tooling configuration of the existing foundation.

E. Roofing

1. Repair or replacement of roofing, gutters, and downspouts when replacement is done in kind to exactly match existing materials and form, however, cement asbestos shingles may be replaced with asphalt based shingles and untreated wood shingle may be replaced with fire resistant wood shingles.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping with compatibly colored material.
2. Replacement or installation of insulation provided that decorative interior plaster, woodwork or exterior siding is not altered by this work item. This exception shall not apply to urea formaldehyde foam insulation or any other thermal insulation that contains water in its chemical composition and is installed within wall cavities.

G. Seismic Upgrades

1. The installation of the following seismic upgrades provided that such upgrades are not visible on the exterior or within character defining historic interiors: cross bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie downs; strapping and anchoring of furniture or mechanical, electrical and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters and on roofs; and the addition of seismic automatic gas shut off valves.

III. ROADS AND ROADWAYS

- A. Repair of road to pre-disaster geometric design standards and conditions using in kind materials: number and width of lanes; shoulders; medians; curvature; grades; clearances; and side slopes.
- B. Repair of road composition with in kind materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles such as the reshaping and compacting road bed soil as well as the repair of asphaltic concrete and Portland cement concrete pavement. The repair of brick or stone paving is not included in this exclusion nor is the regrading of native materials to reconstruct the road bed.
- C. Repair of traffic control devices such as traffic signs, delineators, pavement markings, ramp and traffic surveillance control systems, and traffic signals.
- D. Repair of road lighting with in kind systems.
- E. Repair of other road appurtenances with in kind appurtenances such as curbs, berms, sidewalks, and fences. The repair of brick sidewalks is not included in this exclusion.
- F. Repair of roadway safety elements with in kind elements such as barriers, guardrails, and impact-attenuation devices.

APPENDIX 2: SUBMITTALS FOR SECTION 106 REVIEW

The following is a list of documents that can help expedite the Section 106 Historic Preservation Review for projects under consideration for FEMA funding. If this documentation **exists** it should be included in project applications and submittals to the SHPO for review.

- A. A clear written description of the entire scope of work, including any alternatives that may be under consideration, and any additional work, not funded by FEMA, that will be performed at substantially the same time. Include any studies, plans, drawings, sketches, or schematics, as may be available, to help understand the entire project.
- B. Photos as required showing the proposed project area in the context of its surroundings. If the project is a building, show all sides of the entire building (at least from opposite corners), and the context of the building in its setting including the surrounding buildings. If the project is in a rural setting, show the project area in the foreground with the background of the surrounding area in all four directions.
- C. Location maps (e.g., USGS maps, Thomas Bros. maps or City maps), as necessary to show the undertaking in the context of its surroundings. For projects in rural settings or for projects with ground disturbing activities, USGS maps are mandatory.
- D. Documentation of any other Agency's environmental determinations within the scope of the project and surrounding areas.
- E. Documentation of the date of construction for the original, existing facility (e.g., building permit records, tax records, newspaper accounts, architectural drawings, etc.).
- F. Plans showing the limits of proposed excavations or other ground disturbing activities associated with the project.
- G. Location maps, in addition to those provided above, showing the project within local, state, or national historic districts.
- H. Local, state, or national landmark listings of historic properties within the project area, including the National Register of Historic Places.
- I. Any existing cultural resource surveys or reports describing the archeological/historic properties (e.g., archeological sites, historic buildings, historic landmarks, etc.) that exist within the project area or could be affected by the project.
- J. Copies of any available plans for the existing facility as well as documentation of any changes made since the original construction.